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The Honorable Nicholas Garaufis
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *In re American Express Anti-Steering Rules Antitrust Litig.*, MDL No. 2221

Dear Judge Garaufis:

By letter dated August 6, 2018, the American Express defendants have requested a modification to Your Honor's Order of July 10, 2018 (the "Order") (ECF No. 811). In keeping with Your Honor's Order, Amex states that by August 17, 2018, it will move under Rule 12 or, in the alternative, for summary judgment under Rule 56, to dismiss the Merchant Plaintiffs' ("MPs") allegations of (1) a one-sided market and (2) an American-Express-only market as set forth in the Amended Complaint. Amex states that it "does not currently anticipate" that additional discovery will be necessary in order for the MPs to address Amex's arguments. If the Amex motion does not raise issues requiring additional discovery, then the MPs will, of course, file their responsive pleading by September 14, 2018, as ordered by Your Honor. If the Amex motion is brought under Rule 56 for summary judgment and sets forth factual matter that requires additional discovery, then the MPs may seek leave to pursue that discovery before responding to the Amex motion.

Amex also requests that the Order of July 10, 2018, be modified to allow it to file a second motion for summary judgment with regard to the MPs' two-sided market allegations at a date subsequent to the completion of discovery on the two-sided market issues. The MPs respectfully submit that if Amex is going to assert that the MPs' two-sided market allegations are deficient as a matter of law, then Amex should, consistent with Your Honor's Order, assert that position on August 17, 2018. However, if Amex intends to seek summary judgment on the MPs' two-sided market allegations only as a matter of fact, then the MPs have no objection to Amex deferring its fact-based summary judgment motion on the MPs' two-sided market allegations until the discovery needed to address those claims is complete.

Respectfully submitted,

Paul E. Slater
Counsel for the Merchant Plaintiffs

cc: Counsel of Record